

Senate Bill 355

By: Senators Smith of the 52nd, Hamrick of the 30th, Cowser of the 46th, Harp of the 29th, Meyer von Bremen of the 12th and others

AS PASSED

AN ACT

To amend Article 1 of Chapter 14 of Title 44 of the Official Code of Georgia Annotated, relating to general provisions concerning mortgages, conveyances to secure debt, and liens, so as to provide for the disbursement of certain settlement funds after closing even though such funds are not collected funds; to provide that lenders shall provide loan funds in the form of collected funds at or prior to closing; to provide for related matters; to provide for an effective date and applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 1 of Chapter 14 of Title 44 of the Official Code of Georgia Annotated, relating to general provisions concerning mortgages, conveyances to secure debt, and liens, is amended by revising subsections (c) and (d) of Code Section 44-14-13, relating to disbursement of settlement proceeds, as follows:

"(c) Except as otherwise provided in this Code section, a settlement agent shall not cause a disbursement of settlement proceeds unless such settlement proceeds are collected funds. A settlement agent may disburse settlement proceeds from its escrow account after receipt of any of the following negotiable instruments even though the same are not collected funds:

(1) A cashier's check, as defined in subsection (g) of Code Section 11-3-104, from a federally insured bank, savings bank, savings and loan association, or credit union and issued by a lender for a closing or loan transaction, provided that such funds are immediately available and cannot be dishonored or refused when negotiated or presented for payment;

(2) A check drawn on the escrow account of an attorney licensed to practice law in the State of Georgia or on the escrow account of a real estate broker licensed under Chapter 40 of Title 43, if the settlement agent has reasonable and prudent grounds to believe that

the check will constitute collected funds in the settlement agent's escrow account within a reasonable period;

(3) A check issued by the United States of America or any agency thereof or the State of Georgia or any agency or political subdivision, as such term is defined in Code Section 50-15-1, of the State of Georgia; or

(4) A check or checks in an aggregate amount not exceeding \$5,000.00 per loan closing.

For purposes of this Code section, the instruments described in paragraphs (1) through (4) of this subsection are negotiable instruments if they are negotiable in accordance with the provisions of Code Section 11-3-104.

(d) The lender shall at or before the loan closing deliver loan funds to the settlement agent in the form of collected funds or in the form of a negotiable instrument described in subsection (c) of this Code section; provided, however, that in the case of refinancing, or any other loan where a right of rescission applies, the lender shall, prior to the disbursement of the settlement proceeds and no later than 11:00 A.M. eastern standard time or eastern daylight time, whichever is applicable, of the next business day following the expiration of the rescission period required under the federal Truth in Lending Act (15 U.S.C. Section 1601, et seq.), deliver loan funds to the settlement agent in one or more of the forms set forth in this Code section."

SECTION 2.

This Act shall become effective on July 1, 2008, and shall apply to all loans closed on or after July 1, 2008.

SECTION 3.

All laws and parts of laws in conflict with this Act are repealed.